IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.11.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM
and
THE HON'BLE MR.JUSTICE S.K. KRISHNAN

WRIT PETITION NOS.35806 of 2002 & 9346 of 2004
and WPMP.No.10923 of 2004

Writ Petition No.35806 of 2002:

The Tamil Nadu Government
Rural Welfare Officers Association
Erode District, rep. by its
District President
S. Rathinam. .. Petitioner

vs.

1. B. Kannappan

2. The State of Tamil Nadu
   rep. by its Secretary
   to Government
   Rural Development
   Department, Secretariat
   Chennai 600 009.

3. Director of Rural Development
   Kuralagam, Chennai 600 108.

4. The District Collector
   Erode District
   Erode.

5. The Registrar
   Tamil Nadu Administrative Tribunal
   Chennai. .. Respondents

Writ Petition No.9346 of 2004:

1. The Secretary to Government
   Rural Development
   Department, Secretariat
   Chennai 600 009.

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2. Director of Rural Development
Kuralagam, Chennai 600 108.

3. The District Collector
Erode District
Erode. .. Petitioners

vs.

1. B. Kannappan

2. The Registrar
Tamil Nadu Administrative Tribunal
Chennai 600 104. .. Respondents

Petitions filed under Article 226 of the Constitution of India praying for an issuance of a writ of certiorari mandamus as stated therein.

For petitioner : Mr. V. Suthakar
in WP.35807/02

For petitioners : Ms. V. Velumani
in WP.9346/04 Addl. Govt., Pleader

For 1st respondent
in both the
Writ Petitions. : Mr. G. Thangavel

For R.2 to R.4 in Ms. V. Velumani
WP.35806/02 : Addl. Govt., Pleader

..

COMMON ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Since both the writ petitions are filed against the very same order of the Tamil Nadu Administrative Tribunal, they are being disposed of by the following common order.

2. The Tamil Nadu Government Rural Welfare Officers Association, Erode District through its President, challenging the order of the Tamil Nadu Administrative Tribunal dated 19.06.2002 passed in O.A.No.7200 of 1997, has filed W.P.No.35806 of 2002. Questioning the very same order, the Secretary to Government,

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Rural Development Department, Chennai-9, the Director of Rural Development, Chennai-15 and the District Collector, Erode have filed WP.No.9346 of 2004.

3. Heard the learned counsel for the petitioners as well as the respondents.

4. The common facts are as follows:

(a) The Government in G.O.Ms.No.868 RD & LA Department dated 30.05.1979 has ordered, pending formulation of Single Service Rules in consultation with the Tamil Nadu Public Service Commission, all appointments made in respect of the posts mentioned in the Annexure to the order on or after 01.06.1979 shall be treated as purely temporary and will not confer any rights on the persons concerned till the said Service Rules are issued.

(b) In Rural Development Department, there were two categories of staff carrying identical scales of pay, they are:

Categories of Ministerial Service	Equivalent category in Gramasevak Service (RWO)
1. Junior Assistant/Typist Cashier.	Grama Sevak Grade II
2. Assistant/Accountant in the Panchayat Union/Head Clerk (Education).	Grama Sevak Grade I

The Government merged both the above said Services with effect from 01.06.1979 and passed G.O.Ms.No.585 RD & LA Department dated 12.04.1984, introducing Singe Service Rules and the order came into effect from 01.06.1979.

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(c) The Ministerial Service and Grama Sevak Service were merged for Single ladder promotion. There is no Grama Sevak Service after the implementation of Single Service Rules. The Ministerial staff, such as Junior Assistant/Typist, Cashier and the Grama Sevak Grade II have to pass Departmental tests for Officers of Panchayat Development Department for promotion to Assistant cadre. By judgment dated 28.10.1986, this Court upheld the validity of those Rules and dismissed all the petitions filed

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against Single Service Rules. Thereafter, the Director of Rural Development, Chennai, in his letter dated 04.11.1986 and the Joint Secretary to Government, Rural Development Department, Chennai in his letter dated 06.11.1986, have instructed the District Collectors to implement the Single Service Rules. The Single Service Rules were actually issued on 12.04.1984 and it was implemented in the District of Erode only in November, 1986.

(d) As per the Single Service Rules, the inter se seniority list of merged Ministerial staff and Grama Sevaks working as on 01.06.1979 was issued in the Erode District Collector's reference dated 21.11.1986 and 59 Ministerial Assistants have been reverted to Junior Assistants/ Rural Welfare Officer Grade II and 59 Grama Sevak personnel were promoted to Assistant cadre on 28.11.1986 with a condition to pass Departmental tests for Officers of Panchayat Development Department before 11.04.1987.

(e) The first respondent herein, viz., B.Kannappan, was selected by the Tamil Nadu Public Service Commission and joined in Rural Development Department of Erode District on 30.08.1980 as Junior Assistant. He passed all the Departmental tests for Officers of Panchayat Development Department and he was temporarily promoted to Assistant cadre and joined as Assistant on 19.12.1983. He was one among the reverted persons at the time of implementation of Single Service Rules. He was promoted again as Assistant on the basis of reversion order without any panel and joined as Assistant on 27.05.1987. His service was regularized with effect from 19.12.1983 as per the Erode District Collector's proceedings dated 26.09.1991. In that order, it has been stated that the individual, viz., B. Kannappan cannot claim any right in seniority.

(f) In the panel of Assistant from 01.06.1979 to 1989, B.Kannappan's name was placed in the year 1986 in Serial No.51. After the decision of the Administrative Tribunal in O.A.No.1923 of 1990 etc., dated 07.05.1991, the Government in Rural Development Department letter dated 12.11.1995 have issued instructions regarding fixation of seniority and particularly in para 7 (b) of the letter the following instructions have been issued.

> "7 (b). The seniority in the categories in which they are working as on 12.11.1994 can be determined in accordance with the Single

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Service Rules and will be relevant for the future promotions."

Based on the same, the seniority of Assistant cadre was revised in the Erode District Collector's proceedings dated 22.01.1996. In this, the said Kannappan was placed in serial number 114/1984. Thereafter, the Administrative Tribunal, in O.A.No.1927, 3472 of 1995 dated 04.06.1996, quashed para 7(b) of the Government Letter dated 12.01.1995. Consequently, the Government in G.O.Ms.(3D) No.41 Rural Development Department dated 23.10.1996 have deleted para 7(b) and also ordered that the existing paragraph 7 (c) and 7(d) of the letter will be read as 7(b) and 7(c) and the Collectors have been requested to arrange for fixation of seniority of Panchayat Development Units in accordance with the guidelines issued in Government letters dated 14.10.1992 and 11.03.1993.

(g) As a follow up action, the Director of Rural Development Department, Chennai, in his letter dated 27.08.1996 has requested the Collector, Erode to cancel the seniority list issued on 22.01.1996 and to adopt the original seniority list, which has already been approved and followed for the purpose of further promotions according to the Single Service Rules. In the light of the above instructions, the Collector, Erode has issued the revised seniority list of Assistant / Rural Welfare Officer Grade I from 01.06.1979 to 1989 in proceedings dated 10.12.1996. In this list, the first respondent B. Kannappan was placed in Sl.No.47 in the year 1986.

(h) After the publication of the above seniority list, the first respondent herein has filed O.A.No.7200 of 1997 before the Tamil Nadu Administrative Tribunal, seeking his seniority in Assistant cadre as per Erode District Collector's proceedings dated 22.01.1996. The Tribunal, by the impugned order dated 19.06.2002, accepted the case of the applicant B. Kannappan and issued direction that he shall be entitled for all service benefits based on the regularization of service in the cadre of Assistant with effect from 19.12.1983. Questioning the same the above writ petitions have been filed.

5. Now, we shall consider whether the Tribunal is justified in issuing the direction as claimed by the applicant, viz., B. Kannappan, first respondent herein?

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6. As rightly pointed out by both the writ petitioners, the Administrative Tribunal failed to consider the orders in G.O.Ms.No.868 Rural Development and Local Administration Department dated 30.05.1979, which specifically states that pending formulation and issue of the Single Service Rules in consultation with the Tamil Nadu Public Service Commission, all appointments made in respect of the posts mentioned in the Annexure to the order on or after 01.06.1979 shall be treated as purely temporary and shall not confer any right on the persons concerned till the said Service Rules are issued. In such circumstances, though the first respondent herein was promoted as Assistant on 19.12.1983, his promotion as Assistant is purely temporary. Even though his service was regularized on 19.12.1983, his Assistant cadre seniority was fixed according to Single Service Rules. Again as rightly pointed out, the Tribunal has also failed to consider orders in G.O.Ms.No.585 RD & LA Department dated 12.04.1984, which has prescribed that the Single Service Rules are deemed to have come into force with effect from 01.06.1979.

7. Though the first respondent's service was regularized with effect from 19.12.1983, as per Erode District Collector's reference No.87045/91/N2/ dated 26.9.91, in the same order, it has been specifically stated that the said B. Kannappan cannot claim any right in his seniority. In other words, he has been awarded Selection Grade in the Assistant cadre on 12.06.1994, subject to the condition that the Selection Grade now ordered to him will not in any way alter his existing seniority position in the category of Assistant. This is clear from the proceedings of the District Collector, Erode dated 26.09.1991, which as found at page 43 of the typed set, reads as under:

"

ஈரோடு, பெரியார் மாவட்ட ஆட்சியர அவர்களின் செயலாணை

முன்னிலை– திரு வி.கே.சுப்ப,ராஜ், இ.ஆ.ப.,

நக. எண் 87045–91.பஆ–2 நாள் 26.9.91

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பொருள் – பணியாளர் – பெரியார் மாவட்டம் – ஊரக வளர்ச்சி அலகு – உதவியாளர் / ஊர்நல அலுவலர் நிலை–1,நிலையில் பணிவரன் முறைப்படுத்தப்பட்டது – திருத்தம் வெளியிடல்.

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பார்வை.1. இவ்வலுவலக செயலாணை
நக.எண். 72384/91/பஅ–2, நூள் 28.6.91.

2. திரு. பி.கண்ணப்பன், ஊர்நல அலுவலர் நிலை–1, ஊராட்சி ஒன்றியம், பவானி விண்ணப்பம் நாள் 24.7.91.

3. பவானி ஊராட்சி ஒன்றிய ஆணையரின் கடிதம் ஒமு.5202/91/அ1, நூள் 29.7.91.

4. பவானி ஊராட்சி ஒன்றிய ஆணையரின் நக.எண்.5748/91/அ1, நூள் 29.8.91.

ஆணை/

பார்வை (1)ல் காணும் இவ்வலுவலக செயலாணையில் வெளியிடப்டுள்ள உதவியாளர்/ ஊர்நல அலுவலர் நிலை–1 நிலையில் பணிவரன்முறை உத்தரவிற்குக் கீழ்கண்ட திருத்தம் வெளியிடப்படுகிறது.

"வரிசை எண் 143/ல். கண்டுள்ள பி.கண்ணப்பன், கணக்கர், ஊராட்சி ஒன்றியம், பவானி கலம் 3/ல் உதவியாளர் நிலையில் பணிவரன்முறைப் படுத்தும் நாள் 3.12.86 மு.ப. என்பதற்குப் பதிலாக 19.12.83 மு.ப. எனத் திருத்தி வாசிக்கவும்".

மேற்கண்ட விவரத்தினை திரு.பி.கண்ணப்பனின் பணிப்பதிவேட்டில் பதிவு செய்ய, பவானி ஊராட்சி ஒன்றிய ஆணையர்க்குத் தெரிவிக்கப்படுகிறது. மேற்படித் திருத்தத்தினால் இவரது முதுநிலை வரிசையில் மாற்றம் ஏதும் ஏற்படாது எனத் தெரிவிக்கப்படுகிறது.

இத்துடன் திரு.பி.கண்ணப்பனின் பணிப்பதிவேடு இரு தொகுதிகள் இணைத்தனுப்பி வைக்கப்படுகிறது.

இணைப்பு:. பணிபதிவேடு

ஒம்.....

மாவட்ட ஆட்சித் தலைவருக்காக"

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The above communication makes it clear that the Selection Grade ordered will not in any way alter his existing seniority position in the category of Assistant cadre. As rightly pointed out, the said proceeding has not been challenged by the first respondent. Further, it is stated in G.O.Ms.No.868 Rural Development and Local Administration Department dated 30.05.1979 that the first respondent's promotion to the Assistant cadre is purely temporary and he cannot claim any right in seniority. His promotion has been regularized in terms of the Single Service Rules issued on 12.04.1984, but actually implemented in November, 1986. We are satisfied that the Tamil Nadu Administrative Tribunal failed to consider that the seniority of persons promoted to the Assistant cadre from 01.06.1979 to 1989 has been fixed in the Erode District collector's reference No.121630/96/N2 dated 10.02.1996 according to Single Service Rules and after 28.11.1986, i.e., after the implementation of the Single Service Rules, the date of passing of tests is taken into account for posting into Assistant cadre. As rightly pointed out though the first respondent's service was regularized on 19.12.1983, i.e., on the date of promotion to the Assistant cadre, his seniority is fixed in the Assistant cadre in 1986 based on his Junior Assistant cadre seniority. The Tribunal, failed to consider all the above relevant materials. Even though in paragraph 9 of the impugned order, the Tribunal has accepted that seniority is fixed with reference to the Single Service Rules, it has committed an error in holding that seniority fixed on the basis of date of regularisation in cadre cannot be disturbed and that has to be taken into account for the purpose of seniority and further promotion. The above said conclusion cannot be sustained for the reasons stated above.

Under these circumstances, the order of the Tamil Nadu Administrative Tribunal dated 19.06.2002 passed in O.A.No.7220 of 1997 is quashed and the said original application is dismissed. Both the writ petitions are allowed. No costs. Consequently, connected WPMP.,is closed.

kh

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary
   to Government
   State of Tamil Nadu
   Rural Development
   Department, Secretariat
   Chennai 600 009.

2. Director of Rural Development
   Kuralagam, Chennai 600 108.

3. The District Collector
   Erode District
   Erode.

4. The Registrar
   Tamil Nadu Administrative Tribunal
   High Court Buildings
   Chennai 600 104.

+ 1 cc to Mr.G.Thangavel, Advocate SR no.43965

+ 1 cc to M/s V.Suthakar, Advocate SR No.44026

+ 2 ccs to Government Pleader SR No. 44103, 44102.

TR(CO)
SR/1.11.2005

Common Order in
W.P.Nos.35806/02&9346/04

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